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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 J.H. ROSE LOGISTICS, LLC,
12 Plaintiff,
13 v.
14 DOMETIC CORPORATION,
15 Defendant.

CASE NO. 19-5073 RJB

ORDER ON DEFENDANT'S
MOTION FOR JUDGMENT ON
THE PLEADINGS AND
PLAINTIFF'S MOTION FOR
LEAVE TO AMEND COMPLAINT

16 This matter comes before the Court on Defendant Dometic Corporation's ("Dometic")
17 Motion for Judgment on the Pleadings (Dkt. 12) and the Plaintiff J.H. Rose Logistics, LLC's
18 ("Rose") motion for leave to amend the complaint (Dkt. 13). The Court has considered the
19 pleadings filed in support of and in opposition to the motions and the file herein.

20 Originally filed on January 22, 2019, this case was removed from Pierce County,
21 Superior Court on January 25, 2019. Dkt. 1-1. Dometic now moves for a judgment on the
22 pleadings to dismiss the case, arguing that Rose has failed to plead a claim for relief. Dkt. 12.
23 Rose opposes the motion, but, if the Court is inclined to grant the motion, moves for leave to
24 amend the complaint. Dkt. 13. For the reasons provided, the motion for judgment on the

1 pleadings (Dkt. 12) should be denied without prejudice and the motion for leave to file an
2 amended complaint (Dkt. 13) should be granted.

3 **I. FACTS AND PROCEDURAL HISTORY**

4 **A. FACTS**

5 According to the one-page Complaint, Dometic owes Rose “\$154,578.00 in freight charges,
6 plus collection fees, plus interest, for numerous shipments in which Dometic was the shipper and
7 or consignee and [Rose] was the carrier, as summarized in the attached General Ledger Report . .
8 .” Dkt. 1-1, at 2. The Complaint alleges that “despite demand, no part of the amount set forth
9 above has been paid” to Rose. *Id.* It further provides that Rose “prays for judgment against
10 Defendant Dometic as follows: a) for \$154,578.00 principal, plus interest; b) for collection fees
11 per applicable tariffs; b) [sic] for costs of suit; c) for such other and further relief as the Court
12 deems just and equitable.” *Id.* The “Exhibit A” to the Complaint, entitled “General Ledger
13 Report,” contains a list which includes dates, “batch code[s],” “reference[s],” “description[s],”
14 and “debt[s].” Dkt. 1-1, at 3. There are no specific references to Dometic in the “General
15 Ledger Report.” *Id.*

16 **B. PROCEDURAL HISTORY**

17 Before this case was filed in Pierce County, Washington Superior Court, Rose served the
18 Complaint and Summons on the Dometic on December 28, 2018. Dkt. 14-1. On January 10,
19 2019, Dometic served a “Demand to File Summons and Complaint” on Rose. Dkt. 14-3.
20 Dometic served an Answer on Rose on January 15, 2019, but did not file the Answer in the State
21 case. Dkt. 14-4. The Complaint was filed in superior court on January 22, 2019 and the case
22 was removed to this Court on January 25, 2019. Dkt. 1.

1 On March 7, 2019, the same day the instant motion was filed, Dometic filed a “Supplemental
2 Verification of State Court Records” in which it attached “all the pleadings and other papers filed
3 and/or served in the state court action.” Dkt. 10. Attached to this verification, was a pleading
4 entitled “Defendant Dometic Corporation’s Answer and Affirmative Defenses to Plaintiff’s
5 Complaint.” Dkt. 10-1, at 2-5.

6 C. PENDING MOTION

7 Dometic now moves for a judgment on the pleadings to dismiss the Complaint under Fed.
8 R. Civ. P. 12 (c), arguing that the Complaint contains no theory of relief (e.g. breach of contract)
9 or any facts from which such an obligation could be inferred. Dkt. 12. It asserts that Rose’s
10 Complaint does not meet Rule 8’s requirements. *Id.* Rose opposes the motion and argues that
11 the pleadings have not been closed because no answer to the Complaint has been filed. Dkt. 13.
12 Rose further maintains that the Complaint seeks to recover unpaid freight charges owed by
13 Dometic to Rose which have not been paid, and so it meets the minimal pleading requirements of
14 Rule 8. *Id.* Rose moves for leave to amend the complaint, if the Court finds that the pleading
15 requirements are not met. *Id.* Dometic replies, and argues that it filed its answer as an
16 attachment to the “Supplemental Verification of State Court Records,” so asserts that the
17 pleadings are closed. Dkt. 15. It maintains the Complaint should be dismissed with prejudice
18 and without leave to amend. *Id.*

19 II. DISCUSSION

20 A. STANDARD FOR MOTION TO DISMISS

21 Under Fed. R. Civ. P. 12(c), “[a]fter the pleadings are closed--but early enough not to
22 delay trial--a party may move for judgment on the pleadings.” “Analysis under Rule 12(c) is
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1 substantially identical to analysis under Rule 12(b)(6).” *Chavez v. United States*, 683 F.3d 1102,
2 1108 (9th Cir. 2012)(*internal quotations omitted*).

3 Fed. R. Civ. P. 12(b) motions to dismiss may be based on either the lack of a cognizable
4 legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri*
5 *v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken
6 as admitted and the complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d
7 1295 (9th Cir. 1983). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not
8 need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement
9 to relief requires more than labels and conclusions, and a formulaic recitation of the elements of
10 a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-55 (2007)
11 (internal citations omitted). “Factual allegations must be enough to raise a right to relief above
12 the speculative level, on the assumption that all the allegations in the complaint are true (even if
13 doubtful in fact).” *Id.* at 555. The complaint must allege “enough facts to state a claim to relief
14 that is plausible on its face.” *Id.* at 547.

15 **B. CLOSED PLEADINGS**

16 The motion for judgment on the pleadings to dismiss the Complaint under Fed. R. Civ. P.
17 12(c) (Dkt. 12) should be denied without prejudice because the pleadings are not yet closed.
18 Generally, “the pleadings are closed for the purposes of Rule 12(c) once a complaint and answer
19 have been filed.” *Doe v. United States*, 419 F.3d 1058, 1061 (9th Cir. 2005). Dometic’s attempt
20 at skirting around this requirement by filing the answer that was served, but not filed, as an
21 attachment to the “Supplemental Verification of State Court Records,” is unavailing. The
22 “Supplemental Verification of State Court Records,” states that it was filed pursuant to Local
23 Rule W.D. Wash. 101(c). Dkt. 10. Local Rule W.D. Wash. 101(c), provides:

1 The removing defendant(s) shall, within fourteen days of filing the notice of removal,
2 file with the clerk of this court black-on-white copies of all additional records and
3 proceedings in the state court, together with defendant's or defense counsel's
verification that they are true and complete copies of all the records and proceedings
in the state court proceeding.

4 The answer was not filed in the state court record, nor was it included in a hearing or other
5 proceeding. If Dometic intends to file an answer, it should do so, clearly and in accord with the
6 Fed. R. Civ. P and the Local Rules of W.D. Wash.

7 **C. FAILURE TO STATE A CLAIM AND LEAVE TO AMEND**

8 Fed. R. Civ. P. 8 (a)(2) requires that a complaint should contain a "short and plain
9 statement of the claim showing that the pleader is entitled to relief."

10 The motion to dismiss is not without merit. The Complaint fails to contain a "short and
11 plain statement of the claim." The Complaint alleges that Rose provided a service and that it was
12 not paid. It asserts an amount due. It does not identify a cognizable legal theory – breach of
13 contract, unjust enrichment, or some other equitable claim for relief. If the Court is inclined to
14 grant the motion, Rose moves the Court for leave to amend. Dometic opposes the motion for
15 leave to amend.

16 Under Fed. R. Civ. P. 15(a)(2), "a party may amend its pleading only with the opposing
17 party's written consent or the court's leave. The court should freely give leave when justice so
18 requires." A motion to amend under Rule 15(a)(2), "generally shall be denied only upon showing
19 of bad faith, undue delay, futility, or undue prejudice to the opposing party." *Chudacoff v.*
20 *University Medical Center of Southern Nevada*, 649 F.3d 1143, 1152 (9th Cir. 2011).

21 Rose's motion for leave to amend its complaint (Dkt. 13) should be granted. There is no
22 showing of "bad faith, undue delay, futility, or undue prejudice to the opposing party."
23 *Chudacoff*, at 1152. The case was recently filed and proceedings have just begun. The Plaintiff
24 should be given until **April 30, 2019** to file an amended complaint, if any.

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Therefore, it is hereby **ORDERED** that:

- Defendant Dometic Corporation’s Motion for Judgment on the Pleadings (Dkt. 12) **IS DENIED WITHOUT PREJUDICE**; and
- Plaintiff J.H. Rose Logistics, LLC’s motion for leave to amend the complaint (Dkt. 13) **IS GRANTED**;
 - The deadline for the Plaintiff to file an amended complaint, if any, is **April 30, 2019**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 8th day of April, 2019.

Robert Bryan

ROBERT J. BRYAN
United States District Judge